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CASE NO._____

THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

ROBERT PALMER and FRANCES PALMER

PETITIONERS,

vs.

ILBERT TUCKER and MARGARET TUCKER

RESPONDENTS,

AND OTHER PARTY RESPONDENTS

NAMED HEREIN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI WITH MANDAMUS ACTIONS

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IN PRO PER

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6 pp

QUESTIONS PRESENTED

1. Are statutes that vest power of appointment in bankruptcy judge to appoint trustee, appraiser and trustee's attorney unconstitutional and in conflict with due process clause of the Fifth Amendment?

2. Should mandamus issue against bankruptcy judge, and is judge civilly liable?

3. Was bankruptcy court denied jurisdiction, pursuant to Constitution, Article III, §2, because bankruptcy was a fraud?

4. Should orders imposing punitive attorney's fees and costs be vacated?

5. Should this Court take judicial notice of adjudicative facts, requested but ignored by courts below?

6. Should mandamus issue against district judge who denied impartial review?

7. Should mandamus issue against Panel of Court of Appeals for abnegation of judicial duties, with civil liability?

8. Should mandamus issue against Chief

District Judge and Chief Circuit Judge to conform their conduct to Code of Judicial Conduct and federal law?

9. Should order denying motion on pleadings be reversed, or alternately should orders confirming compromise between trustee and bankrupt's tenant, and pre-arranged judicial sale be vacated with imposition of constructive trusts on wrongful holders of property? [Fairly included]

10. Should judgment after remand that is clearly erroneous, and lacks substantial evidence, be vacated? [Fairly included]

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PARTIES

ILBERT TUCKER AND MARGARET TUCKER, AND
PHILIP BOEBEL AND RIEN BOEBEL, RESPONDENTS,
RALPH DUVALL AND MARGARET DUVALL, AND
MR.& MRS. GEORGE ROBINETTE,III, INTEREST-
ED PARTIES ON NOTICE,
HONORABLE SEYMOUR J. ABRAHAMS, RESPONDENT,
HONORABLE MARILYN HALL PATEL, RESPONDENT,
HONORABLE ROBERT PECKHAM, RESPONDENT
HONORABLE JAMES R. BROWNING, RESPONDENT,
HONORABLE JEROME FARRIS, RESPONDENT,
HONORABLE ARTHUR L. ALARCON, RESPONDENT,
HONORABLE WILLIAM A. NORRIS, RESPONDENT.

AUTHORITIES

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

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OPINIONS BELOW

Appended hereto are: Ninth Circuit Court of Appeals, orders, February 11, 1985, denying petition for rehearing and rejecting suggestion for rehearing en banc; Memorandum Decisions, November 5, 1984, ratifying orders of district. Northern District of California Court's order, April 20, 1984, expunging lis pendens absent jurisdiction; order, October 5, 1983, confirming void orders of bankruptcy court; Bankruptcy Court's judgment after remand, and opinion on remand, December 22, 1982; order denying motion on pleadings, November 29, 1982; order, absent judgment on document, November 6, 1978; order confirming trustee-Boebel compromise, November 23, 1977; and Judicial Council, Ninth Circuit, order, June 21, 1984, dismissing complaint of judicial misconduct.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1). Petitioners pray that writ of certiorari will issue from Memorandum Decisions of the Court of Appeals for the Ninth Circuit, first entered on November 5, 1984. Rehearing was denied by orders of February 11, 1985, with rejection of suggestion for rehearing en banc. Based on same litigation, petitioners concurrently pray that mandamus will issue against federal judges, based on claims set forth herein.

CONSTITUTIONAL PROVISIONS AND STATUTES

The judicial Power shall extend to all Cases, in Law and Equity arising under this Constitution... Article III, §2, of United States Constitution.

No person...shall be deprived of life, liberty, or property without due process of the law...Fifth Amendment to Constitution.

Upon approval of the petition, the judge, shall, if the indebtedness of the debtor...is $250,000 or over, appoint one or more trustees...Bankruptcy Act, §156

An attorney appointed to represent a trustee, shall also be a disinterested person...Bankruptcy Act, §157.

(a) At any time after commencement of a case but before confirmation of a plan, on request of a party in interest... the court shall order the appointment of a trustee --

(2) if such appointment is in the interest of creditors, any equity security holders, and other interests of the estate... Title 11 U.S.C.A. §1104 (a)(2)

...the trustee, with the court's approval, may employ one or more attorneys ... Title 11 U.S.C.A. §327.

STATEMENT OF THE CASE

It is appropriate to comment on issuance of mandamus. It is necessary to evaluate bankruptcy judge's conduct to adjudicate constitutional issue with related claim for mandamus. Criticizm of judge aroused hostility of district judge who dispensed with constitutional and recusal issues by erroneously asserting they were not raised below. She confirmed void orders of court below, and absent jurisdiction expunged lis pendens to facilitate immediate sale of real property.

Court of Appeals simply ratified orders of district, absent jurisdiction to affirm void orders below. No other court can provide supervisory mandamus.

Entire proceedings are void for lack of jurisdiction. (1) They were conducted pursuant to unconstitutional statutes. (2) Fraudulent bankruptcy is feigned and non-justiciable, pursuant to Article III.

(3) Judge lacked personal jurisdiction where he agreed to select appointees committed to favor bankrupt. (4) They were an abuse of National Bankruptcy Laws.

Within proceedings, relief ought to be provided, pursuant to FRCP Rule 60(b) from order confirming compromise between trustee and tenant Boebel, for reasons just stated, plus: (1) Court acted in face of case law and statutes. (2) Action by trustee against tenant was fictitious. (3) Mrs. Palmer and I were indispensable parties not joined. (4) It is against public policy to validate forged contract. (5) Confirming order was obtained and protected by (a) usurpation of judicial power and (b) extrinsic fraud by attorneys, including forgery and perjury.

Mandamus should issue on Chief District and Chief Circuit Judges because they did not report crimes of which they were made aware to U.S. Attorney.

This statement describes repeated deprivations of due process by bankruptcy judge and frauds perpretrated upon the court, by which I was deprived of my rights to property securing notes for $56,000 and $30,000.

Alleged bankrupt Ilbert Tucker, as spiritual and business leader of a Subud Enterprise, was engaged in residential construction in Carmel Valley. Subud is a spiritual brotherhood. Subud employees were joint venturers in the enterprise.

As a Professional Engineer, with Ph.D. from Stanford University, I was interested in Tucker's promotion of pole-frame houses, but was ignorant of the law. To induce me to do business with him, Tucker represented that he would act in fiduciary capacity to Mrs. Palmer and me. He has not denied exercising such fiduciary capacity from December, 1974 until June,

1976. In February, 1978, I obtained documents relating to Subud Enterprise.

During proceedings, I completed a home-study program for LL.B. approved by California Bar.

In June, 1976, I learned that $56,000 note, that was to be secured by a $56,000 Tucker-Palmer first trust deed on 137-1 E. Carmel Valley Rd., was actually secured by a fourth trust deed. Tucker had conveyed a $25,000 first trust deed to a confederate, and had made property unmarketable, with uninsurable title, to assure my loss of $56,000.

The $30,000 note, co-signed by Tuckers and Duvalls, Tucker's parents, was secured by two Tucker-Palmer trust deeds for $15K and $8,000 on 10-D Via Contenta, and a Duvall-Palmer $15,000 trust deed on 11 Buena Vista del Rio. The $15,000 trust deeds were recorded in July, 1975, and the $8,000 trust deed was recorded December,

1975. Properties were inspected, 5/26/75, and Via Contenta property was new, for sale, and had never been occupied. Tucker furnished appraisals of both properties for $65,000, and Lot Book Guarantees showing ownership, and first trust deeds of $42,000 and $50,000, respectively. Tucker provided additional security to safeguard my interests. The security agreements fully encumbered the properties.

In June, 1976, Tucker attempted extortion, under threat of getting nothing from a corrupt bankruptcy court. Tucker said that he and his attorney, Dennis Powell, had planned his bankruptcy through bankruptcy court. Among other things, he said that he had the money to make it big -- in the millions. He planned to be back in construction by December, and into something big, really big. He would make millions of dollars.

The notes I held were no good, worth-

less, and trust deeds securing notes were all fouled-up. In April, he had told me, his tenant, Philip Boebel, bought Via Contenta property by oral contract of sale on 1/1/76. Tucker proposed a $15,000 Boebel-Palmer trust deed for $30,000 note. He said that I really had no choice because he had followed his attorney's step-by-step instructions in carrying out each transaction. If I refused, I would get nothing in bankruptcy court.

The $30,000 note, and properties securing it would not even be scheduled as part of his estate. I was incredulous that Tucker had reached a federal judge.

To convince me that I had been defrauded as part of a greater fraudulent bankruptcy, Tucker described a "scam" by which he borrowed at usurious, illegal rates of interest. Individual lenders had "unclean hands" and could not sue for fraud in bankruptcy court, a court of equity. All

his debts would be wiped out. I said that my hands were clean. Tucker warned that if I sued and won, it was arranged that Powell would appeal. I would be tied up in litigation for years. Tucker warned that he had the money to fight me, and he would have a lot to say about how I would treated in bankruptcy court.

On July 8, 1976, attorney Powell required that I acknowledge that Tucker had told me in April, 1976, that he had sold Via Contenta property to Boebel by 1/1/76 oral contract of sale. Powell was going to commit the oral agreement to writing. He would include Boebel-Palmer trust deed in contract of sale in exchange for $30K note. My attorney refused, I had lost $35,000 on $56,000 note. Thereafter, Powell intimidated my attorney and he got off the case. Powell than committed forgery.

On August 1, 1976, Powell fabricated a

contract of sale that memorialized an alleged oral agreement of May 1, 1975, rather than the oral agreement of January 1, 1976. The sale price of $50,000, allowed for a $15,000 Boebel-Palmer trust deed, establishing obligations of purchase in amount of $65,000, the fair market value of the Via Contenta property.

On August 6, 1976, at 12:13 pm, a petition in bankruptcy was filed against Tucker by non-Subud employees. On same date, forged contract of sale was recorded, after petition was filed at 2:12 pm.

Tucker has been represented by Dennis Powell. Co-venturers by Powell's associate, Robert Herendeen, who uttered forged instrument in federal court.

Bankruptcy Judge Abrahams selected appointees committed to carrying out the fraudulent bankruptcy. Trustee, James Dungan, sued Tucker in April, 1971, represented by his long-time attorney, Bryan

MacDonald, who joined in partnership with Herendeen, after bankruptcy. Trustee, bankrupt, and co-venturers had prior dealings and are linked to same attorneys. The appraiser is Dungan's long-time friend and a creditor of the estate. Hoffman & Kelly, San Francisco bankruptcy specialists, located 120 miles from where Tucker did business, were appointed trustee's attorneys.

Trustee participated in a scheme to have me accept Boebel's trust deed. Kelly wrote, in a letter, 3/77, to Herendeen:

> We are aware of the deed of trust executed by Mr. Boebel and his wife in favor of Robert Palmer, and that creates a unique situation.

Attorney Kelly disputed validity of my security agreements and threatened prolonged litigation, unless I employed an attorney, specializing in bankruptcy with whom, he, Kelly could negotiate. Kelly told me to contact David Murray. Murray and his partner, James Grube, stated that

they would represent me to the best of their ability, and assured me they were constrained by attorney's code of ethics. Grube filed complaint for non-discharge of $56,000 note for fraud, but did nothing in regard to $30,000 note.

In March, 1977, I obtained copy of contract of sale and learned it was based on 5/1/75 oral agreement. Grube represented that he had reached a tentative settlement with Kelly, that he could not reveal. He assured me that my trust deeds having been recorded first, had priority over the contract of sale.

In May, 1977, Grube wrote to my bank, describing settlement that provided over $16,000 in recovery to estate. In August, 1977, trustee-Palmer Compromise came on for hearing. It was criticized by Judge Abrahams, because, in essence, the Carmel Valley Road property was being abandoned to one creditor, Palmer, in preference to

another. Grube immediately withdrew the compromise. Grube was aware that I had a commitment from my bank for a loan to buy assignments of senior liens. After hearing Grube advised that trustee no longer had any dispute with me to settle.

I received notice of hearing on trustee-Boebel Compromise, by which Boebel would pay $1,200 for trustee's quit claim deed. Grube advised that I could not object to the compromise, bid for the quit claim deed, interfere with or meddle in the affairs of other parties who were attempting to settle their differences. Only Judge Abrahams could determine the appropriateness of the compromise. Boebel had not appeared at hearing on Palmer Compromise, and Grube instructed me not to attend hearing on Boebel Compromise. He said that he would not attend.

In November, 1977, Attorney Herendeen, demanded reconveyance of trust deeds se-

curing $30,000 note. Murray had a special relationship with Judge Abrahams and refused to move for reconsideration of order confirming Boebel Compromise.

During February, 1978, I copied documents in Kelly's office and learned that trustee had filed fictitious complaint against Boebel to set aside Tucker-Boebel contract of sale as a preference, which it was not. Attorneys Kelly and Herendeen fabricated facts to validate forged instrument, filed false pleadings, and perjurious application for confirming order. Kelly had requested a written memorandum to satify Statute of Frauds, and a Proposal and Contract was provided, from Tucker's records, that was altered on its face. The fictive facts presented no factual dispute, or controversy.

Kelly proposed a $5,000 bribe for Buena Vista property while I was in his office.

Tucker's records show that as of May

31, 1976, capitalization loans totaled $658,906.28, and with some duplication, an incomplete list of usurious loans totaled about $700,000. In the period, November, 1975 through April, 1976, disbursements of $161,882.50 were made to Tucker's parents, the Duvalls, none to Tuckers, but other members of the Subud Enterprise's Executive Board were disbursed $127,553.60. By deposition of Fayra Teeters, a Subud creditor, each member of the five-man Executive Board was conveyed a residence in contemplation of bankruptcy. Kelly by deposition, January, 1977, questioned Mrs. Duvall about Tucker's joint tenancy interest in Buena Vista property. In Kelly's 5/8/80, application for compensation, he falsely states that after estate had been administered for approximately two years he became first became aware of Tucker's interest in property. Appointees aided Tucker in concealment of assets.

In May, 1978, I employed Attorney James Hagan to file motion to vacate confirming order using the evidence, including Boebel's checks starting 8/25/75, payable to Tucker, clearly marked "rent." Boebel put tham in evidence as mortgage payments starting May, 1975. Boebel's fraudulent ownership would be protected by shield of doctrine of res judicata. Motion to vacate was opposed by Kelly based on conversation with me at hearing on Boebel Compromise that Judge Abrahams and his appointees thought would be difficult to refute. If true conversation justified summary dismissal of motion. Hagan prepared affidavit, with proof that I was at Kaiser Hospital on date of hearing. Judge Abrahams publically ignored Kelly's perjury, but intimidated my attorney, Hagan to withhold the evidence.

Hagan advised that he could not introduce any evidence that would embarrass

Kelly, Judge Abrahams' appointee. To make certain that the evidence was withheld, Judge Abrahams limited evidence to forged Proposal and Contract for ruling on whether it was a fraud upon the court. Hagan pointed out that if document was judged a forgery, it proved contract of sale also was forged. If not a forgery, Tucker-Palmer trust deeds were fraudulent. Either way, $30,000 note would be joined for trial with $56,000 note to determine non-dischargeability.

Herendeen procured false affidavits from Tucker and Boebel attesting to the authenticity of Proposal and Contract. Hagan advised Judge Abrahams that he wanted to proceed by way of oral testimony with right of cross-examination. Judge Abrahams bifurcated the hearing to prevent cross-examination.

Judge Abrahams did not do what he stated he would do, make a judgment on the

document. He said, in regard to document:

> If it was a fraud, and I am not saying it was a fraud, it was an unsophisticated fraud, and I am going to ignore it.

The above statement, was not included in partial transcript that I ordered, and other statements made during official proceedings of the court also are not in the record, as described in my affidavit to district court, 7/16/83.

Attorney Hagan, intimidated by Court, falsely advised that he could not appeal.

In August, 1978, Judge Abrahams, demonstrating scienter, invited me to inform him of any frauds that had influenced his decisions. In October, 1978, I filed declaration citing misconduct by attorneys.

Hagan, by motion, objected to sale of trustee's interest in Buena Vista property, until our interest in property had been adjudicated. Hagan would not allow me to bid to acquire trustee's quit claim deed. Attorney Herendeen by letter, pre-

arranged judicial sale. Tucker's tenant in Buena Vista property acquired joint tenancy interest for $1,000.

At trial, February, 1979, to determine non-dischargeability of $56,000 note, Hagan told me that Judge Abrahams did not want to hear about Tucker's fiduciary duty to me. Fraud was found. Not inconsistent with Tucker's June, 1976, claim, Judge Abrahams misconstrued substantive law and set damages at time of transaction. Powell appealed and district set damages when I foreclosed, May, 1978, based on fair market value. Property was unmarketable at foreclosure. Attorney Hagan, asserting his better judgment appealed. Absent merit, district was affirmed.

In 1980, Hagan learned from Powell that Tucker and his brother had built two million dollar housing project. I located a 54-unit project, Quail Ridge in Atascadero that had retail value approaching five

million dollars. Transactions had been executed by Bryan Duvall. Hagan would take no action in bankruptcy court.

In November, 1980, I employed Attorney Robert Jette to file adversary proceeding to revoke Tucker's discharge granted April 1980. Powell claimed Tucker's where abouts was privileged attorney-client information. Tucker was served by publication because he had changed his name and was hiding. At hearing, August, 1981, Judge Abrahams threatened sanctions. Later, Jette said that Judge Abrahams did not want the action in his court. Without advising me, Jette stipulated to dismissal and was released.

In state court, October, 1981, Judge Paik, said that he wanted a settlement, no trial. My attorney, Randy Hess, moved to compel Tucker to testify. Attorney Powell conceded that Tucker was a relevant witness, and he could produce his client.

Motion was denied. After Herendeen made opening statement, he made offer to settle. Judge Paik insisted that I consider overnight. The unconscionable settlement was a division of spoils, and contrary to public policy. Boebel falsely testified, to clear defaults, that he took actual possession of Via Contenta property on May 9, 1975.

On October 8, 1981, I filed declaration describing six acts of fraud upon the court, citing authority that court had a duty to act sua sponte to protect its integrity, pursuant to F.R.C.P. Rule 60(b) 28 U.S.C. Judge Abrahams suggested I file an action, complaint or motion. On August 27, 1981, transcript of 5/20/77, pre-trial hearing was prepared. It reports perjurious statements by Kelly and Herendeen, representing that the contract of sale was recorded "a few days before" petition in bankruptcy was filed. Attorneys repre-

sented there was no factual dispute. Case was submitted to determine validity of the forged contract of sale.

At hearing on motion to vacate confirming order for extrinsic fraud, transcript, petition and contract of sale were put into evidence without objection by Attorneys Powell, Herendeen and Kelly. Court disregarded, rejected, and would not rule on evidence. Judge Abrahams said:

> One has to be a lawyer before becoming a judge and the court will not find fraud upon the court by lawyers.

Attorney Powell requested judicial notice that he was the "smartest lawyer" in area. Comments by judge and attorney have been deleted from the record.

In August, 1982, I moved for leave to amend and supplement pleadings, and pursuant to Bankruptcy Rule 715, such leave "shall be freely given when justice so requires."

Denial of motion to amend complaint

is not required either by virtue of lateness or because amendment is offered following remand from prior appeal. R.E.B. Inc. v Ralston Purina Co. 525 F2d 749 (1975).

A complaint (or motion by analogy) should not be dismissed for failure to state a cliam unless there appears beyond cavil, that plaintiff can prove no set of supportive facts which would entitle him to the relief sought. Nicholson v Bd. of Comm. of Ala. Bar Assoc., 318 F Supp 48 (1972)

My pleadings claim that powers of appointment vested in bankruptcy judge are unconstitutional.

¶61 ...I believe this court has conflicts of interest that it cannot resolve...these prejudices are so strong that the court should no longer preside over this matter. I respectfully request that the court disqualify itself forthwith, POINTS & AUTHORITIES, at 14.

¶7 Defendant Tucker advised that he would influence the proceedings herein. .. My right to due process has been obstructed in this court. DECLARATION at 2.

¶9 ...This court's actions have not been inconsistent with an unwarranted prejudice favoring the bankrupt. DEC 3.

¶11 As a first-time litigant, I find the Bankruptcy Act inconsistent with an individual's right to due process under the Fifth Amendment to the Constitution. The Bankruptcy Court is given the great responsibility of appointing officials who will administrate a bankruptcy es-

state in a fair and just manner, without prejudice. The inconsistency with due process arises because the actions taken by the appointees are, at least, a reflection on the court's ability to select honest and competent appointees, and, at worst, a manifestation of collusion. One therefore must expect some special treatment favoring appointees an an adversary proceeding. The Bankruptcy Court should be relieved, be freed, from the responsibility of making appointments that substantially inhibit the court from treating all parties to an action with equal fairness. DECLARATION at 3.

SECOND SUPPLEMENTAL CLAIM FOR RELIEF

¶46 ...it is clear to me that our constitutional rights have been violated. Tucker by planning his bankruptcy has created a situation where if his cause is advanced mine is set back. Tucker threatened and warned me that he would have a lot to say about how I would be treated in Bankruptcy Court. The course of these proceedings has not been inconsistent with Tucker's statement... Prejudice favoring the bankrupt and his agent, has prevented me from obtaining equal treatment under the law.

¶47 By reason of the facts herein alleged, Plaintiffs have been denied due process pursuant to the provisions of the Fifth Amendment to the U.S. Federal Constitution.

The facts alleged are as follows: (supra.)

Defendant Tucker's answer to my plead-

ings, filed October, 1982, clearly brings into issue the appointment powers of the bankruptcy court, pursuant to FRCP Rule 7(c) 28 U.S.C. Defendant at 2, states:

> The apparent basis for Mr. Palmer's attitude about the Court has to do with the Court's appointment of Attorney William Kelly and trustee James Dungan and an attorney named James Grube, who apparently was recommended to Palmer by Kelly. At page 9 of the Points and Authorities filed Palmer states:
>
> ...The trustee, attorney and appraiser were involved in a scheme to justify a fraudulent conveyance.
>
> Elsewhere Palmer states:
>
> Moreover, my attorneys, Murray & Grube were imposed on me by the attorney appointed by this Court. They connived against me and deprived me of a hearing on my case. Thereafter, this Court executed an order based on a fabricated document.
>
> From that Palmer concluded that this constituted a reflection on the court's ability to select honest and competent appointees, and worse, a manifestation of collusion.

Judge Abrahams did not respond to issues raised by pleadings and denied motion for lateness. I appealed from order in November, and in December, 1982, I appeal-

ed from judgment after remand.

In January, 1983, Powell made veiled threats by phone. He told me that I was taking on a federal judge and asked who I was trying to send to jail. He indicated District Court was fixed, and said I would get no where in District Court. He offered me a $25,000 note from Tucker, in exchange for dropping both appeals. In February, Tucker called to dissuade me from filing appellant's brief, due that day in Judge Lynch's court. Tucker advised that Boebel had fled the State of California. I filed affidavits of conversations with district, and recorded lis pendens against Via Contenta property.

The Constitutional issue, with notice to district clerk, was raised. Defendant's Reply Brief, at 5, states:

> ...Appellant's logic, if carried further, would invalidate the appointment of counsel to represent any indigent defendant inasmuch as one might

reasonably argue that the court would then be inclined to hold the defendant innocent of any charges against him. The argument is without merit.

Appellant's Reply Brief, at 5, states:

...The trustee is...an agent of the court... With the enactment of 28 USC §455, in 1974, the standards for evaluating the impartiality of the bankruptcy court...have made it more difficult for...(a) judge to meet the standards set by the statute.

It interferes with the judicial process to impose an administrative responsibility on the Bankruptcy Court that impugnes the court's impartiality. The solution has been proposed by Commission...(on) Bankruptcy Laws...

Appellant's Reply Brief, at 1, states:

REQUEST FOR JUDICIAL NOTICE

1. Rule 201(d) F.R.E. does not specify the form of the request by a party taking judicial notice. Thus, even a letter to the court may be considered sufficient, 32B Am Jur 2d §39.

Adjudicative facts were categorized (A) Bankruptcy Court Documents, Tucker's records and judicial proceedings (B) Superior Court Documents, partial transcript of Boebel's testimony claiming ownership 5/9/75 and Judgment (C) Recorded Documents and (D) My Business Records:

$30,000 note and trust deeds; record of inspections, Via Contenta property, 5/75; sketch of property from Tucker on inspection, 5/75; Binford-Palmer letter describing property ownership and equity supporting trust deeds, 6/75; Tucker-Palmer letter with appraisals and Lot Book Guarantees, 11/75; Powell-Abramson letter proposing Boebel-Palmer trust deed, 7/76; Kelly-Palmer compromise up to $10,000 to estate, 12/76; Grube letter to bank compromise over $16,000 to estate, 5/77; Herendeen-Grube letter demanding reconveyance of trust deeds, 11/77; photo of sign at law office, showing Herendeen and Powell associated, 4/78; diagram of relationships; Document Examiner's report on altered document, 9/78; Herendeen's letter pre-arranging judicial sale, 11/78, and Hagan-Pribble (Court Reporter) letter regarding deletions from record, 7/79.

In addition, I later submitted certified copies of Notice of Completion, that includes Tucker's claim of exclusive ownership, 5/14/75; Tucker-Palmer trust deeds, recorded 7/75 & 12/75, and Tucker-Boebel contract of sale recorded 8/76.

District Judge Patel threatened assessment of punitive costs if I brought further action. By order denying appeals 10/5/83, Judge Patel erroneously stated:

> There is nothing in the record to show that this [constitutional] issue was raised in the proceedings below, and thus will not be considered by this court on appeal.

Judge Patel denied mandamus, for the same reason, ignoring that 28 U.S.C. §455 is self-enforcing. She cited §144 procedures that apply only to district judges, and do not apply to bankruptcy judges, Ginger v Cohn, CA 6 1958, 255 F2d 99. Judge Patel, with prejudice, ignored my request for mandatory judicial notice and confirmed all orders of bankruptcy

court. She had a self-enforcing duty to recuse.

By Post-Order Declaration, I requested that Judge Patel recuse or reconsider on her own motion, and informed the court that in good faith I paid delinquent taxes of $1,500 to prevent foreclosure action against Via Contenta property by holder of first trust deed.

In January, 1984, Herendeen filed motion to expunge lis pendens. On February 1, 1984, I filed complaint of judicial misconduct against bankruptcy judge. The hearing on motion was cancelled by letter from Attorney Herendeen. Not inconsistent with his knowledge of complaint, Attorney Powell phoned, called me a "jerk" and hung up. I posed interrogatories to show that Boebel had "unclean hands" and was not entitled to relief provided by expungemnt of lis pendens. I asserted district court was absent jurisdiction

to act on motion to expunge lis pendens.

> Bankruptcy court has jurisdiction to determine whether or not the lis pendens should be expunged...under California law and Federal interpretation of the scope of appeal. In re Thatcher, Bnkrptcy, 24 B R 964, 1982.
>
> An action to impose a constructive trust on real property is an action affecting title to or possession of real property. Coppinger v Superior Court, 134 CA3d 883, 185 Cal Rptr 24, 1982.

Prior to March 5, 1984, hearing, Judge Patel's clerk told me that the hearing had been cancelled, with no new date. In her expunging order 3/19/84, Judge Patel stated that I had agreed to forego a hearing. I was tricked out of the opportunity to confront Herendeen by District Judge. She awarded unconscionable attorney's fees and costs of $3,600 for filing practice motion, without appearance. On 4/17/84, I mailed notice of appeal with mandamus action for docketing the following date. On 4/20/84, I personally filed another notice. No

amended order had been docketed. My notice was being held by Judge Patel's clerk. Judge Patel issued amended order expunging lis pendens dated April 20, 1984, she had prevented the docketing of my notice in response to Herendeen's ex parte communication to facilitate sale of property in violation of statute. If my notice had been filed in Court of Appeals a motion would have been required, Smith v Lujan, CA Guam 1979, 588 F2d 1304.

Amended order was recorded April 27, 1984, and property sold in violation of:

> California Code of Civil Procedure, CCP §409.5: No order expunging a notice of pendency of action made pursuant to ...§409.2 shall be effective, nor shall it be recorded...until the time within which a petition for writ of mandate may be filed pursuant to §409.4 has expired.

Herendeen prematurely recorded, and voided expunging order issued by district and is in contempt.

> Contempt: CCP §1209(4): Abuse of process or proceedings of the court, or

> falsely pretending to act under authority of an order or process of the court. One in contempt may not seek any relief from court of whose order such person is in contempt. Robinson v Superior Court, 9 Cal Rptr 130, 186 CA2d 644, 1961.

On appeal, notice that constitutional issue was being raised was provided Clerk of Court of Appeals, and Appellant's Opening Brief was provided U.S. Attorney Joseph Russoniello, who restated decision not to intervene.

At hearing Panel, stated that they had read my briefs, and understood case. I called specific attention to terms of contract of sale that denied possession to vendee. By non-published Memorandum Decisions Panel made no ruling on request for judicial notice, did not examine underlying orders for voidness, ratified orders of district, denied petition for review and rejected suggestion of rehearing en banc.

REASONS FOR GRANTING WRIT

United States Supreme Court granted certiorari where issue was important in administration of bankruptcy laws and was one of first impression in Supreme Court. Reading Co. v Brown, Pa. 88 S Ct 1759, 391 US 471, 20 L Ed 2d 751, 1968.

This case of first impression presents a well-defined conflict between National Bankruptcy Laws and Fifth Amendment, raising substantial due process issue dealing with supervision and administration of federal bankruptcy courts - that statutes empowering bankruptcy judge to appoint trustee in bankruptcy, appraiser and trustee's attorney, are unconstitutional, on their face, and in conflict with due process as promulated by this Court. Marshall v Jerrico, 446 US 238, 100 S Ct 1610, 1980.

The issue has been controverted outside the courts for decades. Professor MacLachlan's Hornbook on Bankruptcy (1956) reports, at 26, that the Bankrupt-

cy Act was amended in 1926 with "charges and some proof of bankruptcy 'rings' where attorneys on good working terms exchanged courtesies and cooperated with one another..." MacLachlan by footnote cites "Donovan Report" that turned charges and opinion into proof. At 226, MacLachlan writes, "Furthermore, the referee's role as advisor to the trustee may make him 'collection-minded,'" a euphemism for judicially favoring trustee. While trustee is no longer compensated on a commission basis, claims for administration expenses are given priority. Trustee and his attorney are motivated to disadvantage secured creditors, because they are compensated from the assets recovered for the estate.

The current vernacular for "collection-minded" is "cramdown" where settlement is imposed by bankruptcy court on creditors against their will. According

to a Robert Morris Associates survey, it is of moderate concern to 35% of bankers and a big one for 21%, Wall Street Journal, 1/31/83, 31:1. The taking of secured creditor property rights through bankruptcy is of substantial national importance and concern. The issue is ripe for adjudication.

The Commission on Bankruptcy Laws of the United States, when proposing Bankruptcy Act of 1973, reported that attorneys specializing in bankruptcy belong to "cliques or rings" and have a vested interest in maintaining statutes that empower bankruptcy judge to appoint trustee and trustee's attorney, and concluded:

> Adversaries of the trustee tend to doubt that the referee who appointed the trustee can insulate himself from at least a suspicion of partiality when he may previously have been involved in ...conferences with the trustee regarding collection of assets of the estate and litigation on its behalf. These considerations have led the Commission to recommend the severing of the admin-

> istrate from judicial functions within the bankruptcy system. Selected Bankruptcy Statutes, ed. David G. Epstein, West, 1974, at 300.

Statutes vesting appointment powers in bankruptcy judge provide opportunities for conspiracies in furtherance of fraudulent bankruptcies, and collusive abuse of National Bankruptcy Laws. These appointment powers are inconsistent with case law.

> Every procedure which would offer a possible temptation to the average man as judge not to hold the balance nice, clear, and true...denies...due process. Re Murchison, 349 US 133, 75 S Ct 623.

Government Invaded Rights Without Justification: The Federal Government violated procedural aspects of Fifth Amendment when, absent substantial evidence and without justification, it invaded my property rights to validate a false claim against bankruptcy estate. Matter of Joyner, 7 B R 596, 1980, sets prerequisites for Fifth Amendment claim.

The Tucker-Boebel contract of sale was forged to steal my rights to Via Contenta property. Boebel claimed actual possession in May, 1975, pursuant to oral terms memorialized by instrument, but he signed it 8/5/76. Boebel committed perjury to assert a claim that the instrument denied him. The contract speaks for itself.

> ¶2 POSSESSION: Vendee shall be entitled to possession of said property upon signing of this security agreement.

> A forged deed is completely void and ineffective to transfer any title to the grantee. Subsequent title derived through a forged instrument is completely unenforceable, even if recorded and held by a bona fide purchaser. Trout v Taylor, 220 C 652, 1934, Cutler v Fitzgibbons, 148 C 562, 1906, Meley v Collins 41 C 663, 1871, Nutzke v Bill Reed Painting Serv. Inc., 151 CA3d 36, 196 Cal Rptr 418, 1984. Miller & Starr California Real Estate, at §14.58.

Co-venturers also were estopped from denying validity of their trust deeds, Blaisdell v Leach, 101 C 405.

No Meaningful Opportunity To Object: Murray & Grube, attorneys specializing in

bankruptcy, had a greater loyalty to a "bankruptcy clique" than to a one-time client. They connived against me to lose.

> Fraud upon the court confers equitable jurisdiction on a court to set aside judgment where unsuccessful party has been prevented from fully exhibiting his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court; a false promise of a compromise, or where defendant never had knowledge of the suit being kept in ignorance by acts of the plaintiff; or where the attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where the attorney corruptly sells out his client's interests to the other side. Luttrell v U.S., CA 9th 1980, 644 F2d 1274. [Citing U.S.v Throckmorton, 98 US 61, 25 L Ed 93, 1878].
>
> Since attorneys are officers of the court, their conduct, if dishonest would constitute a fraud upon the court for purpose of motion to vacate judgment for fraud. H.K. Porter Co. Inc. v Goodyear Tire & Rubber Co., CA Ohio 1976, 536 F2d 1115.

Lack of Fundamental Fairness: Power of Appointment statutes, permit bankruptcy judge to select trustee, the litigant, who, as the court's agent, will bring ac-

---

tions in his court, violating the appearance of justice, denying adversaries of the trustee due process, and creating doubt as to the integrity of the court. In this case, Judge Abrahams has selected appointees, whose actions have not been inconsistent with Tucker's claim of having corrupted the court.

> Courts have recognized that direct proof of fraudulent intent is so peculiarly within the proper control of those sought to be charged with fraud that it is proper, and usually necessary to show the inferences of fraudulent intent from the circumstances surrounding the transaction. U.S. v Bertie, 529 F2d 508, 1976, Fn. Citing Menich v Goldy.

Judge Abrahams did not respond to motion on pleadings that with specificity described deprivations of due process in his court. By letter to Clerk, District Court, he elected not to respond to mandamus action.

> Failure to explain facts and circumstances warrants inference that party's testimony would have been adverse. N. Sims Organ Co. v S.E.C., CA 2 1961, 293

F2d 78.

When Kelly's perjury was proven, Judge Abrahams set a lower standard for honesty and integrity on his appointee and himself than the law allows. He ignored this fraud upon the court. He then intimidated my attorney to withhold evidence, and limited evidence to one document for judgment. He bifurcated hearing to prevent cross-examination, denied judgment on document in evidence, and intimdated my attorney to prevent appellate review.

> A judge's private, prior agreement to decide in favor of one party is not a "judicail act" because judicial impartiality is an expectation of the aggrieved party. Thus, a judge could be liable upon proof of such agreement, even if absolutely immune for subsequent judicial acts. Further, to lose absolute judicial immunity, the judge must know he lacks personal jurisdiction, or "act in the face of clearly valid statutes, or case law expressly depriving him of jurisdiction." Rankin v Howard, CA 9th 1980, 633 F2d 844.

Judge Abrahams confirmed trustee-

Boebel Compromise acting in the face of clearly valid case law, In re Truscott Boat & Dock, DC Mich 1959, 92 F Supp 430, where referee confirmed compromise between trustee and lienholder, and lien was invalid against trustee and other creditors. Compromise was confirmed after the facts were in. At that stage, there was no controversy to compromise, and lien was obviously invalid.

Judge Abrahams acted in the face of clearly valid statutes, the Act §70(a) Zestee Foods v Philips Foods Corp., CA 10th 1976, 536 F2d 334, where instrument recorded after petition is filed is void against trustee and creditors; and §70(e)(1) where instrument is void under fraudulent conveyance statutes. If Judge Abrahams accepted instrument as a preference, it was void pursuant to §60a(6) of Act. Congress specifically disapproves equitable liens perfected, under Californ-

ia law recorded, within prefernce period.

Proceedings were also void under FRCP Rule 60(b)(6) because Judge Abrahams usurped his power imposing extreme hardship and injustice on Mrs. Palmer and me.

Mandamus, with civil liability, should issue against Judge Abrahams.

Article III Jurisdictional Issue: A feigned or collusive action is not justiciable. Plaintiff, trustee in bankruptcy, had no standing to sue, because he has no different standing than the fraudulent bankrupt, Case, Controversy or Actual Controversy, 40 L Ed2d 783, §5, Standing to sue. Bankrupt is a fraud, trustee is a fraud, trustee's principal is a fraud. Proceedings were coram non judice.

Public Policy: It is against public policy to let stand proceedings that abuse National Bankruptcy Law, and 18 USC §152.

Attorney's Fees: Unconscionable attorney's fees and costs have been imposed on me by judgment after remand in bankruptcy court, and by expunging order in district court, as punitive measures to dissuade me from accessing the courts. These assessments should be vacated.

Tucker and Boebel as fraudulent vendor and vendee have "unclean hands" and are in contempt. Justice requires that they be denied equitable relief. Moreover, Boebel signed promissory note for legal fees to Carnazzo, Herendeen & Bryan and secured open note by conveying a deed of trust against Via Contenta property, 11/77. Payment of legal fees was tied to successful stealing of my property rights through a collusive action by trustee and tenant Boebel, against my unrepresented third party interests.

> ...plaintiff and defendant have the same interest, and that interest adverse and in conflict with the interest

of third persons, whose rights would be seriously affected if the question of law was decided in the manner that both parties to the suit desire...

The whole proceeding was in contempt of the court, and highly reprensible. Lord v Veasie, 49 US 251, 121 L Ed 1067, 1850.

Tucker claimed that he reached Bankruptcy Judge. Attorney Powell intimated that District Court was fixed and I would get no where in district.

The attorney who attempts by personal influence to control a judge or jury in their decision in a pending case, or who merely holds himself out as able to do so, whether or not he actually makes the attempt, in short, an apostate lawyer, who is false to the lawyer's creed that justice shall be undefiled, is ejected from the courts, and as a lawyer ceases to exist...

The client who with evil intent employs such an agent fares no better... To him also the doors of the courts are closed. From the moment that he cease to depend upon the justice of his case and seeks discriminatory and favored treatment, he becomes a corruptor of the Government itself... Root Refining v Universal Oil, 169 F2d 514.

Fifth Amendment forbids the federal government and its agants through which it acts-courts...and other officers - to use...psychological pressure, threats of fines...or other government-

al pressure to force a person to testify against himself. Irwine v People of the State of California, 347 US 128, 98 LEd 561, 74 S Ct 381, 1953.

By analogy, no citizen should be pressured to give up his right of access to the courts, under threat of sanctions or punitive attorney's fees and costs, when his adversaries case is totally lacking in merit. Attorney Powell offered a $25,000 note in exchange for dropping appeals demonstrating that my case was neither frivolous nor vexacitious.

Judicial Notice: A court takes notice of its own proceedings. My request for judicial notice calls attention to parts of the record. Refusing to acknowledge my request does not prevent admittance of what is already in the record. When a court ignores its own record, based on extrinsic factors, it disqualifies itself by demonstrating prejudice.

Findings by trial judge (and by

analogy, any judge) unsupported by the record are evidence that judge has relied on extra judicial sources in making such determinations indicating bias and prejudice. Blizard v Fielding, DC Mass 1976, 454 F Supp 318, af 601 F2d 1217.

This section 28 USC §455, requiring a judge to disqualify himself where his impartiality might reasonably be questioned is self-enforcing and does not require action by the parties. State of Idaho v Freeman, DC Idaho 1981, 507 F Supp 706.

I directed attention to Boebel's checks, payable to Tucker, marked "rent" that were put into evidence by Boebel as mortgage payments. By his own hand, Boebel wrote "rent", and only a tenant pays rent. Bankrupt's notes, part of judicial record, show Boebel entered into rental agreement in August, 1975. There is only false evidence supporting Boebel's claim of ownership. District's ruling that Judge Abrahams' orders are "not clearly erroneous" is in conflict with case law.

The "clearly erroneous" concept em-

> bodied in FRCP as standard to be applied in determining whether to accept findings of master or trial judge requires, for acceptance that evidence be "substantial evidence" but it does not stop there, and findings must be set aside if court is left with the impression that the result is not the truth and right of the case, and in this sense, at least the terms are not synonymous. WRR Corp v Greer, CA Tex, 313 F2d 750, 753.

It is appropriate that judicial notice be taken of that part of the record, and other adjudicative facts related to federal questions, pursuant to case law affirming that invalidity of a statute may be shown by things which will be judicially noticed or by facts established by evidence, Weaver v Palmer Bros, 270 US 402, 46 S Ct 320, 70 LEd 654.

Void Orders: District's orders and Court of Appeals Memorandum Decisions are void, because underlying orders of Bankruptcy Court are, void.

> An appellate court is without authority to confirm a void judgment, because trial court was without authority to render it. Irwin v City of Manhat-

tan Beach, 227 CA2d 634, 38 Cal Rptr 875, 1964.

A court has the inherent power to inquire into integrity of its own judgments and to set tham aside when fraud or corruption of its officers has been shown. Chicago Title & Trust Co. v Fox Theatres Corp., DC NY 1960, 182 F Supp 18.

If judgment is void, it is necessary to evaluate validity of underlying judgment in reviewing order denying motion for relief from judgment, and if the underlying order is void, order based on it is void; if voidness is found, relief is not discretionary matter but is mandatory. FRCP, Rule 60(a)(b)(4) 28 USC. V.T.A. Inc. v Airco, Inc., 597 F2d 220, 1979.

Mandamus, District Court: Judge Patel was made aware of conspiracy to carry out Tucker's fraudulent bankruptcy. At hearing on appeal, I accused Attorney Powell of committing forgery. He did not defend himself. Judge Patel asked if the case was submitted. For some reason, she protected Powell. She protected conspirators from suffering the consequences of their wrongful acts.

"Accesory after the fact" is one who

with knowledge of another's commission of a felony, receives, relieves, comforts, or assists felon in order to hinder latter's apprehension, trial or punishment. Shelly v U.S., CA 10 1935, 76 F2d 483.

Acts of principal and accessory after the fact to substantive offense are one continuous criminal transaction and constitutes single offense committed by them jointly. Id.

Judge Patel was hostile, denied review of constitutional and mandamus issues, obstructed justice, joined in conspiracy, confirmed void orders, prevented prompt entry of my notice of appeal, in response to ex parte communication, she arbitrarily expunged lis pendens, recorded for proper purpose, absent jurisdiction. Mandamus should issue, with civil liability.

Mandamus, Court of Appeals: Panel ratified orders of district, without examining underlying orders for voidness, where voidness was claimed. Panel knowingful accepted district's prejudiced, misconstruance of facts and law, and con-

doned fraudulent taking of my property rights. Panel refused to carry out its judicial functions, denying me impartial appellate review, and concealed its actions by non-publication.

> An abnegation by the judge of his judicial function, although no actual fraud was perpretrated may well be a "legal" fraud by him upon the judicial institution. Ensumge v Powers, 2 S Ct 643, 27 L Ed 732.

Mandamus should issue against members of Panel. Indeed, where a Three-Judge Panel responds to extrinsic factors, conspires to act in furtherance of an ongoing conspiracy in abuse of National Bankruptcy Laws, their conduct may rise to a violation of 18 USC §241.

Manadamus Chief Judges: Chief District Judge Peckham appointed Judge Abrahams. It is not inconsistent with the appointment of San Francisco law firm that Judge Abrahams acted at the behest of Judge Peckham. Judge Peckham, acting

for Assignment Committee, assigned a hostile Judge Patel to review my appeals.

U.S. Attorney did not enter case to represent Judge Abrahams on mandamus, or to investigate accusations of extrinsic fraud, including forgeries and perjuries by attorneys in abuse of National Bankruptcy Laws. In his dissertation to Yale University, James Eisenstein, Counsel For The United States, 1968, descibes relationship between U.S. Attorney's office and District Courts, based, in part, on interviews with government attorneys and judges, at III-60, he reports:

> The judges go beyond themselves in overseeing the office. They don't say we shouldn't bring certain categories of cases anymore. But they are concerned with whether specific cases should be prosecuted. The Chief Judge will be in the U.S. Attorney's office all the time. They'll talk about the status of different cases and the different investigations pending. That's where [the Chief Judge] plays quite an important role. The judges feel like we are working for them to some extent. And we are, but this can go to far.

Judge Peckham, having been an attorney with Department of Justice, prior to appointment to District Court, would have an added advantage in persuading action or non-action in a particular case, where his appointee, Judge Abrahams'was involved. Such action, if taken on behalf of Judge Abrahams, would also protect co-conspirator attorneys.

Supervisory mandamus is appropriate action against Chief Judge Browning for dismissing complaint of judicial misconduct against Judge Abrahams and for other reasons. Where the complaint deals with same matters reported herein, it is not prejudicial to Judge Abrahams to raise the issue.

> Where there was little confidentiality to protect non-compliance with the rule prohibiting use of name in caption of complaint did not offend fundamental fairness as to void proceedings for removal from office, In re Gillard, 27 NW2d 785.

The intent of the state in protect-

> ing the reputation of judges or its interest in maintaining the institutional integrity of its courts is not sufficient to justify the subsequent punishment of speech exercised by strangers to the disciplinary inquiry who divulge or publish truthful information which the state seeks to hold confidential. Landmark Comm. Inc. v Virginia, Va., 98 S Ct 1535, 435 US 829, 56 LEd2d 1.

My complaint was served on Judges Abrahams, Peckham and Browning. Chief Judge Browning dismissed the complaint. I filed Petition for Review, and Amended Complaint requesting that Judge Browning correct error in his order, at p. 1:

> ...The bankruptcy was filed on August 6, 1976. Two years before that, the complainant claims to have been told by the bankrupt that the latter had 'planned his bankruptcy, with his attorney, through the bankruptcy court.'

Tucker told me about planning his bankruptcy in June, 1976, two months before his bankruptcy. Judge Browning reconsidered, and let his order stand without correction, making this serious complaint, appear meritless.

Mandamus should issue against Chief Judges whose responsibilities include supervision of the courts, to cause them to conform their conduct to Code of Judicial Conduct and federal law.

> An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. Canon 1.
>
> A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware. Canon 3B(3).

Each of the seven federal judges involved in this case, has made a conscious decision to act in support of an ongoing conspiracy in abuse of National Bankruptcy Laws, and each should bear the consequences of his action in accordance with appropriate measures initiated by this Supreme Court. Not one of them has reported frauds perpretrated upon the court by attorneys involving crimes of moral

turpitude, forgery and perjury, to U.S. Attorney. The U.S. Attorney has discretion as to what cases he will investigate and pursue, and he is not interested in this civil litigant's complaint. His exercise of no action, has been supported by Assistant Attorney General, Criminal Division of Department of Justice, 1/29/85 [RWO:MV:dgs, 39-11-0].

> It would clearly tend to undermine confidence in judicial system if judges were viewed as being held to lower standards of propriety than lawyers. Hampton v Harrahan, DC Ill 1980, 499 F Supp 640.

Yet, for some reason, complacency, cronyism, or worse judges have acted to obstruct justice, to aid and abet an ongoing conspiracy. Judges who hold themselves out to the public as adhering to higher ethical standards than the general public, should be held to those standards.

> When a judge on the bench, by his own conduct arouses a substantial doubt as to his judicial integrity, he commits the highest crime that a judge can commit under the Constitution. It is not

> essential to prove guilt... When there is reasonable doubt as to his integrity he has no right to stay longed. He has forfeited his right. Trial of Impeachment of Halstead L. Ritter, 74th Congress, 2d, In the Senate, 4/14/36, 611.

This case is a horrendous case of injustice arising from abuse of an unconstitutional statute, and lack of supervision in the courts below. In his order dismissing my complaint, Judge Browning at 3, states:

> The errors alleged by the complainant, however, are no different from those that might be cited in any similar bankruptcy proceeding. Their nature and extent are not such as to justify an inference of judicial misconduct.

If this case is typical, then forgery and perjury are taking their toll on the American public through the administration of bankruptcies. In this case alone, the U.S. government, without justification, invaded the property rights of some 50 or more creditors.

For nine years, Mrs. Palmer and I have suffered great hardship from this criminally contrived litigation. While I am motivated by self-interests to seek justice, my fellow citizens are in the forefront of my concerns. No other citizen should suffer a similar experience in this dark corner of the federal judiciary.

With each new action, we renew our trust in the federal judiciary. This Supreme Court, last refuge for restoration of individual rights, should review and adjudicate this case on writ of certiorari, and mandamus should issue as requested.

Respectfully submitted,

Robert Palmer

Robert Palmer
In pro per.

March 12, 1985.

84-1467 (2)

Office-Supreme Court, U.S.
FILED
MAR 18 1985
ALEXANDER L. STEVAS,
CLERK

CASE NO. _____

THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

ROBERT PALMER and FRANCES PALMER

PETITIONERS,

vs.

ILBERT TUCKER and MARGARET TUCKER

RESPONDENTS,

AND OTHER PARTY RESPONDENTS

NAMED HEREIN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDIX TO PETITION FOR CERTIORARI WITH MANDAMUS ACTIONS

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IN PRO PER

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In Re

ILBERT TUCKER AND MARGARET TUCKER,
Bankrupts.

ROBERT PALMER AND FRANCES PALMER,

Petitioners-Appellants,

VS.

SEYMOUR J. ABRAHAMS,

Respondent, Nos.-83-2554/5

ILBERT TUCKER AND MARGARET TUCKER,

Respondents-Appellees,

PHILIP BOEBEL AND RIEN BOEBEL,

Parties in Interest.

ORDER

Before: FARRIS, ALARCON, AND NORRIS,
Circuit Judges.

The panel as constituted above has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b0.

The petition for rehearing is denied, and the suggestion for rehearing en banc is rejected.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT PALMER AND FRANCES PALMER,

Petitioners-Appellants

VS.

SEYMOUR J. ABRAHAMS, ILBERT TUCKER AND MARGARET TUCKER,

Respondents, ORDER

PHILIP BOEBEL AND RIEN BOEBEL,

Parties in Interest-Appellees.

No. 84-1920

Before: FARRIS, ALARCON, AND NORRIS,

Circuit Judges.

The panel as constituted above has voted to deny the petition for rehearing en banc, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied, and the suggestion for rehearing en banc is rejected.

UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

In Re
ILBERT TUCKER AND MARGARET TUCKER,
Bankrupts.

ROBERT PALMER AND FRANCES PALMER,
Petitioners-Appellants,
V.
Seymour J. Abrahams,
Respondent,
ILBERT TUCKER AND MARGARET TUCKER,
Respondents-Appellees,
PHILIP BOEBEL AND RIEN BOEBEL,
Parties in Interest.

D.C. # 83-0745/6 MHP
No. 84-2554/5

Appeal from the United States District Court for the Northern District of California. Honorable Marilyn Patel, U. S. District Judge, Presiding.

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* The panel has concluded that the issues presented by this appeal do not meet the standards set by rule 21 of the Rules of this Court for

disposition by written opinion. Accordingly, it is ordered that disposition be by memorandum, forgoing publication in the Federal Reporter, and that this memorandum may not be cited to or by the courts of this circuit save as provided in Rule 21 (c).

Argued and Submitted October 2, 1984 Before: FARRIS, ALARCON, AND NORRIS, Circuit Judges.

We affirm the Judgment below. The only order appealed from here is the district court's order of October 5, 1983, which affirmed two orders of the bankruptcy court issued November 29, 1982. Robert and Francis Palmer raise a variety of challenges to the order, but none of these challenges is meritorious.

The Palmers contend that it was error for the district court to deny a writ of mandamus ordering the bankruptcy judge to recuse himself for bias.

A writ of mandamus will issue only under extraordinary circumstances. The Palmers have failed to meet their burden of proving that such circumstances exist. They point to no evidence in the record, other than their bare unsubstantiated allegations, that bias existed. In addition, an extraordinary writ to disqualify a judge for bias will usually issue only when a party has submitted an affidavit showing bias before a judgment is entered. SEE GLADSTEIN V. McLAUGHLIN, 230 F. 2d 762 (9th Cir. 1955). Here the Palmers did not challenge Judge Abrahams until after he ruled unfavorably to them.

The Palmers also contend that Judge Abrahams' conduct deprived him of judicial immunity and ask in this court for the first time for a finding of civil liability and an award of damages.

This is also new on appeal. If the Palmers wish to pursue this claim, they must file a new action against Judge Abrahams.

The Palmers also contend that the provisions of the former bankruptcy code that allowed the bankruptcy judge to appoint a trustee for the bankrupt were unconstitutional. They cite no authority for this novel proposition. Moreover, the district court rejected this claim on the ground that the record does not establish that this contention was raised before the bankruptcy court. Although the Palmers claim that the issue was raised, there is nothing in the record to support that claim. It is well settled that parties cannot add matters to the record that were not raised in the proceedings below. SEE UNITED STATES V. WALKER, 601 F.2d 1051, 1054-55 (9th Cir. 1979).

The Palmers also seek relief from

the district court's order affirming the November 29, 1982 decision of the bankruptcy court not to allow the Palmers to amend their complaint to attack the November 1977 order of the bankruptcy court confirming the sale of the Via Contenta property to the Boebels. The bankruptcy court determined that the claim ofextrinsic fraud, which the Palmers sought to add in the amended complaint, had already been fully adjudicated and decided adversely to the Palmers in an opinion issued by the bankruptcy court of February 21, 1982. That opinion denied the claim of extrinsic fraud on the ground that it was time barred under Federal Rule of Civil Procedure 60 (a) and Bankruptcy Rule 924. The Palmers do not deny that their extrinsic fraud claim was denied in an earlier proceeding because it was time barred; indeed they acknowledge that their former attorney

advised them that they had lost the claim because it was made too late. (Appellants' Brief ¶ 64 at 22). Even though the Palmers might once have had a valid claim that the Via Contenta property transaction should be voided on grounds of extrinsic fraud, they are not entitled to continue to raise that claim again and again once it has been lost because the time allowed in which to challenge the decision had run.

The Palmers further contend that a constructive trust should be imposed on the Via Contenta property. This claim fails because it is based on the extrinsic fraud claim that was time barred.

Finally, the Palmers also ask for a reversal and remand for retrial on the issue of the value of the Carmel Valley Road Property. The fair market value of the property is a factual determination that is not clearly erroneous based on the record. Judge Abrahams relied on

testimony of appraisers in making his determination. The Palmers' theory that the value of the property was zero because it was unmarketable as encumbered is devoid of merit. The bankruptcy court made allowances for the costs of making the title marketable. These determinations were not clearly erroneous.

Appellees, the Tuckers, ask for attorneys fees in the amount of $3,035.00 representing 22.5 hours for the cost of defending the appeal. Palmer admits that he continues to pursue his claims even though they have been denied on multiple occasions by both the bankruptcy court and district court. He now challenges the actions of those courts by making unsubstantiated charges that both state and federal judges have joined with his attorneys and those of his opposition to defraud him. The district court earlier warned Mr. Palmer:

"I conclude that there is no merit

> to the arguments that you've raised on appeal, and I am going to give you a word of caution; this litigation has been going on for a long time. I am going to be merciful at this point and assume that you have not been acting out of any bad faith in pursuing this, and I am not going to order that attorney fees and costs be paid, but I am going to warn you now so it will appear as a mstter of record that if you continue to attempt to litigate this by renewing claims that have already been put to rest before the Bankrupcy Court or before this Court, then costs and attorney fees will be assessed."

Reporter' s Transcript, U.S. District Court, September 26,1983, p. 7.

Under these circumstances, we invoke our inherent power to "assess attorneys fees when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons. . ."Alveska Pipeline Service V. Wilderness Society, 421 U.S. 240, 258-59 (1975). The amount of fees will be fixed upon submission.

AFFIRMED.

UNITED STATES COURT OF APPEAL

FOR THE NINTH CIRCUIT

ROBERT PALMER AND FRANCES PALMER,

Petitioners-Appellants

V.

SEYMOUR J. ABRAHAMS, ILBERT TUCKER and MARGARET TUCKER,

Respondents,

D. C. No. C83-0745 MHP
No. 84-1920

RHILIP BOEBEL and RIEN BOEBEL,

Parties in Interest-Appellees.

Appeal from the United States District Court for the Northern District of California Honorable Marilyn Patel, U.S. District Judge, Presiding.

* The panel has concluded that the issues presented by this appeal do not meet the standards set by Rule 21 of the Rules of this Court for disposition by written opinion. Accordingly, it is ordered that disposition be by memorandum, forgoing publication in the Federal Reporter, and that this memorandum may not be cited to or by the courts of this circuit save as provided in Rule 21 (c).

Argued and Submitted October 2, 1984

Before: FARRIS, ALARCON, AND NORRIS,

Circuit Judges.

We affirm ghe judgment below because the district court did not abuse its discretion by expunging the two lis pendens in question or by affirming the bankruptcy court's award of attorneys fees. The only order appealed from in this matter is the district court's amended order expunging lis pendens and awarding attorneys fees and costs dated April 20, 1984. The plaintiffs/appelants, Robert and Frances Palmer, attack this order on a variety of grounds, but none of their claims is meritorious.

First, the Palmers ask relief from the Bankruptcy Court's order of November 23, 1977. We cannot deal with that order on this appeal. On this appeal, we are only dealing with the district court's order of April 20, 1984. That district court order did not review the bankruptcy court's Noverber 23, 1977

order, which was challenged in another appeal, In re Tucker, Nos. 83-2554/5. In our memorandum decision in that case, we explain the reasons we reject the Palmers' challenge to the November 23, 1977 order.

Second, the Palmers ask us to impose a constructive trust on the Via Contenta property. Again this matter is not properly raised in this appeal. The district court did not deny the request for a constructive trust in its April 20, 1984 order. We have no jurisdiction to impose a constructive trust in the absence of an appeal from a final judgment denying this relief.

Third, the Palmers seek a writ of mandamus to compel District Judge Patel to disqualify herself for bias. Although the Palmers assert that Judge Patel was "in league with (their) adversaries," they provide no evidence for their charges. Conjecture and supposition is

not such evidence. The fact that Judge Patel ruled against the Palmers is not such evidence. We will not issue the extraordinary writ of mandamus based on the uncorroborated assertions of the Palmers that Judge Patel was biased against them.

Fourth, the Palmers ask relief from the district courts' order expunging the two lis pendens. The district court had the authority to expunge the lis pendens under California law. 1/ See California Code of Civil Procedure ¶409.1; United Professional Planning, Inc. V. Superior Court, 9 Cal. App. 3d, 377, 385 (1970). Calfornia law provides that an order expunging a lis Pendens is not appealable and can only be challenged by writ of mandate. See California Code of Civil Procedure ¶ 409.4. The standard for review is abuse of discretion. Tropasso V. Superior Court of the County of Orange, 73 Cal. App.

3d 561, 567-68 (1977).

The Palmers apparently had two theories for filing the lispendens. The first theory is that the lis pendens was filed to enforce the judgment obtained as a result of the East Carmel Valley Road property. This theory fails because that action does not affect title or right to possession of the property on which the lis pendens was filed. California Cose of Civil Procedure ¶ 409.1 limits the use of a lis pendens to actions on the property on which the lis pendens is filed. The second theory is that the lis pendens was filed pursuant to the Via Contenta trust deeds from Tucker to Palmer. This theory fails because the challenge to the sale of the Via Contenta property to Tucker was time barred, as we discussed in our disposition of the related case of In re Tucker, Nos. 83-2554/5.

Fifth, the Palmer ask from the district courts' award of attorneys fees. The California Code of Civil Procedure ¶409.3 authorizes the court to award attorneys fess to the prevailing party in a motion to expunge a lis pendens. The relevant standard for review is abuse of discretion. See Loring v City of Scottsdale, 721 F.2d 274, 276 (9th Cir. 1983). Given the circumstances of the case, these fee awards would appear to be within the legitimate discretion of the courts below. The fact that lower amounts have been awarded in other cases does not establish that the awards in this case were an abuse of discretion.

AFFIRMED.

* The panel has concluded that the issues presented by this appeal do not meet the standards set by Rule 21 of the Rules of this Court for disposition by written opinion. Accordingly, it is ordered that disposition be by memorandum, foregoing publication in the Federal Reporter, and that this memorandum may not be cited to or by the courts of this circuit save as provided in Rule 21(c).

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

In Re

ILBERT TUCKER AND MARGARET TUCKER,

Bankrupts.

ROBERT PALMER AND FRANCES PALMER,
Plaintiff-Appellant-Petitioners,

Vs.

No. 84-1920

SEYMOUR J. ABRAHAMS,
Respondent,

ILBERT TUCKER AND MARGARET TUCKER,
Defendant-Appellee-Respondents.

PHILLIP BOEBEL AND RIEN BOEBEL,
Parties in Interest.

No. C-83-0745-MPH
C-83-0746-MPH
(Related Cases)

The instant motion is the outgrowth of unnecessarily complicated bankruptcy litigation between appellants, the Palmers, and defendant Tucker, bankrupt. The parties have agreed to submit the motion without oral argument. The court has considered all the papers on file herein and renders its decision as set

forth below.

By order dated November 23,1977, the Bankruptcy Court affirmed the sale of the bankrupt's property commonly known as 10- Via Contenta, Carmel Valley, California, to petitioner Boebel as part of a compromise of a claim by petitioner. The Bankruptcy Court twice denied respondent's motion to vacate the November 23, 1977 order on February 12, 1982, and November 29, 1982. This court affirmed all orders of the Bankruptcy Court by its order dated October 5, 1983.

During the course of this litigation, respondent filed two lis pendens against the Via Contenta property. Petitioner seeks to have both lis Pendens expunged pursuant to California Code of Civil Procedure ¶409.1. A lis pendens is properly expunged by the court before which the proceeding is pending. Cal. Civ. Proc. Code ¶409.1. "(D)uring appeal, either the trial court of the appellate court has the

power to expunge under the statute." United Professional Planning, Inc. V. Superior Court, 9 Cal. App. 3d 377, 385 (1970). Moreover, it is within the inherent powers of this court to act where the proceeding before it is absolutely devoid of merit.

California Code of Civil Procedure ¶409.1 provides that ... "the court ... shall ... order that the (lis pendens) be expunged, unless the party filing the notice shows to the satisfaction of the court, by a preponderance of the evidence that: (a) the action does affect title to or right of possession of the real property described in the (lis pendens) and (b) ... the party recording the notice has commenced or prosecuted the action for a proper purpose and in good faith."

Respondent misconstrues the nature of the present action as one concerning real property. Appellants' claims are brought in the context of a bankruptcy proceeding.

In their complaint filed in Bankruptcy Court plaintiffs sought to have a debt declared nondischargeable and prayed for damages based upon a claim of fraud. The property which was the subject of that complaint is not the same parcel of property against which the lis pendens was filed. The Bankruptcy Court ultimately awarded damages based upon computations relating solely to the other parcel of property, identified as the East Carmel Valley Road property. Appellants also sought to amend their complaint in the Bankruptcy Court to add a claim seeking to set aside 1977 order of that court on the ground of extrinsic fraud. That order related to Via Contenta property. The Bankruptcy Court denied the motion. Plaintiff appealed both orders and this court affirmed. Thus, there is no action before the Bankruptcy Court or this court that affects title to or the right to possession of the Via Contenta property.

Even were this court to accept a characterization of this action as one concerning real property, respondent has not established, nor could he, that this action is being litigated for a proper purpose and in good faith. Respondent must establish that this action was prosecuted in good faith both at trial and on appeal. Peery v. Superior Court, 29 Cal. 3d 837, 843 (1981). Respondent's opposition merely recites the factual details of the underlying action. All of those factual allegations, however, have been decided against respondent by both the Bankruptcy Court and this court. "The patent lack of merit of an appeal from a sound judgment is ...demonstrative of an appellant"s improper purpose. (T)o avoid expungement after judgment, the losing party must demonstrate that he will raise a substantial issue for review...." Peery, 29 Cal.3d at 844-5. Respondent has not presented a substantial issue for review.

Respondent seeks only to relitigate once again matters that have been fully adjudicated and decided adversely to respondent.

Having failed to establish that this action concerns title to or the right of possession to the Via Contenta property and that this action is prosecuted in good faith, the lis pendens should be expunged.

Pursuant to California Code of Civil Procedure ¶409.3, petitioner, as prevailing party to a motion to expunge, is entitled to reasonable attorneys' fees and costs. Petitioner has incurred legal fees in the amount of $75.00 per hour plus costs. The court takes judicial notice of the prevailing hourly rates of attorneys in the community and previous orders of this court awarding attorneys' fees, including the declarations and papers upon which the orders were based, and concludes that $75.00

per hour is a reasonable rate.[1/] The hours claimed by petitioner's attorney appear reasonable. Therefore, petitioner is entitled to receive $75.00 per hour for 45.3 hours or $3,397.50, as reasonable attorney's fees for the time expended to date in expunging the lis pendens, plus $200.70 in costs.

1/ The Equal Access to Justice Act, 28 U.S.C. ¶2412, which provides for awards of attorneys' fees to prevailing parties in civil actions brought against the United States, has designated $75.00 per hour to be a reasonable fee. Although that statute is not applicable here, it is instructive.

Accordingly, IT IS ORDERED

1) that the lis pendens recorded in the Office of the County Recorder of Monteresy County, City of Salinas, California, at reel 1618, page 0999, by respondent on March 17, 1983, be expenged;

2) that the lis pendens recorded in the Office of the County Recorder of Monterey County, City of Salinas, California, at reel 1704, page 179, by respondent on January 30, 1984, be expunged;

3) that respondent is hereby enjoined from filing any further lis pendens against the property commonly known as 10-D Via Contenta, Carmel Valley, California.

IT IS FURTHER ORDERED that resppndent pay to petitioner within sixty (60) days of the date of this order the reasonable attorneys' fees and costs in the amount of $3,598.20. DATED: APR. 20, 1984.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

In re

ILBERT TUCKER and MARGARET TUCKER,
Bankrupts.

ROBERT PALMER and FRANCES PALMER,
Plaintiff-Appellant-Petitioners,

vs. No. C 83-0745/6 MHP

SEYMOUR J. ABRAHAMS,
Respondent,

ILBERT TCUKER and MARGARET TUCKER,
Defendant-Appellee-Respondents.

ORDER

In this action, plaintiff and appellant Palmer seeks to set aside Order of Bankruptcy Court issued November 29, 1982 and order of Bankruptcy Court issued December 22, 1982. Plaintiff further sseks a Writ of Mandamus disqualifying Bankruptcy Judge Seymour J. Abrahams from this case.

Plaintiff brings a number of issues before this court for consideration, some of which are related to the above-

mentioned orders and are properly raised and some of which are raised for the first time on appeal. Initially, these unrelated matters must be disposed of under the well-settled principle that parties cannot add matters to the record that were not raised in the proceedings below. United States B. Walker, 601 F. 2d 1051, 1054-55 (9th Cir. 1979). Plaintiff raises the issue of the constitutionality of Bankruptcy Code provisions allowing a Bankruptcy Judge to appoint a trustee and an appraiser in bankruptcy. There is nothing in the record to show that this issue was raised in the proceedings below, and thus it will not be considered by this court on appeal.

Plaintiff seeks a writ of mandamus disqualifying Judge Abrahams from the case on the grounds of bias. Although a Judge is under a duty to disqualify him or herself on the grounds of bias or personal interest, 28 U.S.C. ¶455, this

matter was not raised in the proceedings below and is not properly before this court. Furthermore, extraordinary writs to disqualify a Judge from a case are issued only in exceptional cases, usually when a party has submitted an affidavit showing bias before a judgment is entered. Gladstein v. McLaughlin, 230F.2d762 (9th Cir. 1955). Plaintiff's actions at this point, after a number of orders adverse to plaintiff's interests have been issued by Judge Abrahams in this litigation, is not timely.

Appellant objects to the Bankruptcy Court's Order of November 29, 1982 denying appellant's Motion to Amend its complaint in order to set aside an order of the Bankruptcy Court issued November, 1977 on the grounds of extrinsic fraud. The lower court's determination that this matter had already been fully adjudicated and decided adversely to appellant was correct. An earlier motion

to set aside the November, 1977 Order, brought in these same proceedings had been decided adversely to appellant in an Opinion by Judge Abrahams issued on February 21, 1982. Judge Abrahams found that appellant's motion, at that date was time barred under Federal Rule of Civil Procedure 60(a) and Bankruptcy Rule 924, in that it was not brought more than a year after the order hasbeen issued. This is a correct statement of the law and appellant's attempt to amend its complaint and reopen this matter was properly denied.

Appellant also contests the Order of December 22, 1982, setting damages on appellant's claim on a $56,000 note, secured by a deed of trust on property commonly known as Eest Carmel Valley Road. Appellant, who foreclosed on the property, contests the set-off of its damages by $104,000, the fair market value of the East Carmel Valley Road

property. Appellant claims the property is "unmarketable." The fair market value of the property was a factual determination, and is not clearly erroneous based on the record, which shows Judge Abrahams relied on the testimony of appraisers in making determination. Thus, the December 22, 1982 Order should stand.

Finally, appellant disputes that part of the December 22, 1982 Order awarding defendant and appellee its costs of appeal. The discretionary award of costs is authorized by Bankruptcy Rule 115(e) and Judge Abrahams did not abuse his discretion in awarding costs to appellee.

This court, having heard oral argument from both parties on September 26, 1983 and having reviewed the briefs and record of this case, makes the following orders:

IT IS ORDERED that the Order of the

Bankruptcy Court of November 29, 1982 and the Order of the Bankruptcy Court of December 22, 1982 be AFFIRMED in all respects.

IT IS FURTHER ORDERED that appellant's request for a Writ of Mandamus disqualifying the Honorable Seymour J. Abrahams from this case be DENIED.

Dated: OCT 5-1983

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re

ILBERT TUCKER
MARGARET TUCKER
Bankrupts

ROBERT PALMER and FRANCES PALMER
Plaintiffs

Bankruptcy Nos.
576-1826-A
576-2747-A

vs.

ILBERT TUCKER and MARGARET TUCKER
Defendants.

JUDGEMENT AFTER REMAND

This matter having come on regularly, on November 5, 1982, forfurther trial and argument after remand from the United States District Court for the Northern District of California, plaintiff Robert Palmer appearing pro se and defendant Ilbert Tucker appearing through Dennis Powell, Attorney at Law, and the court having heard the argument and considered the evidence, and good cause appearing,

IT IS HEREBY ORDERED that plaintiffs recover judgment against defendant Ilbert

Tucker in the amount of $8,893.34, together with interest thereon at 7% per year from May 8, 1978. Plaintiffs are awarded their costs in Bankruptcy Court and defendant is awarded his costs on appeal.

Dated

December 22, 1982

SIGNED

SEYMOUR J. ABRAHAMS
Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re

ILBERT TUCKER
MARGARET TUCKER

Bankrupts

ROBERT PALMER AND
FRANCES PALMER
Plaintiffs

Bankruptcy No.
576-1826-A
576-2747-A

Vs.

ILBERT TUCKER AND
MARGARET TUCKER

Defendants

MEMORANDUM OPINION ON REMAND (INCLUDING FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The District Court's Modified Order for Remand provides:

> The Bankruptcy Court is directed to compute plaintiffs' damages, if any, by offsetting the fair market value of the property as of the date of foreclosure. In computing damages, plaintiffs are entitled to recover expenses incurred in paying off prior liens and any loss of interest as a result if a delay in payment of the note.
>
> The case is remanded to the bankruptcy judge for decision consistent with this holding.

BEST AVAILABLE COPY

Under this order, I am to decide two questions: (1) fair market value on the date of the foreclosure, May 8, 1978, and(2) the interest lost as a resulf of the delay in "payment" of plaintiff's note. Palmer seeks to add a third issue: the deductibility of mechanics lien claims.

A. Fair Market Value at Foreclosure.

I find that the fair market value of the subject property on May 8, 1978, the date of foreclosure, was $99,000. This is the difference between Appleton's appraisal of $104,000 (RT 340: 3-4) and the $5000 pro-rata share of the expense of clearing title to the tennis court (RT 366:17-18, 358:8-13).

Appleton was the most credible of the appraisers. Middleton claimed only a $3000-$5000 increase in value from 1978 to 1979, an extremely low increase for those times. Wyman was probably not appraising for "fair mardet value", and he spoke only in generalities as to his

appraisal methods and supplied no calculations.

Plaintiff argues that the property's problems or defects made it "unmarketable", so that it would have no "fair market value." This is not correct. All of the problems could be cured or removed upon the payment of appropriate sums of money. If we calculate the fair market value of the house in an ideal condition and then subtract the cost of curing the problems, the difference is the fair market value of the property, as is.

Because Appleton's $104,000 appraisal did not provide for curing the title problem regarding the tennis court (RT 355:15-356:20), I have deducted the cost of curing that defect.

Plaintiff urges that we must also deduct the cost of completing construction of the house. I believe Appleton took this factor into account, however. His testimony shows that he had followed

the course of construction (RT 336:6-11) and that he made "adjustments" to other sales to make them comparable (RT 339: k2-24).

B. The expenses incurred in paying off mechanics liens: In my original decesion, I found the cost of satisfying liens to be as follows:

1st Anloff	$31,977.33
2nd Scarlett	8,100.00
3d Reynolds	6,000.00
Total	46,077.33
Foreclosure Cost	860.00
Recording fees	9.00
Reconveyance fees	84.00
Total	$47,030.33

Palmer seeks to add to these figures the amounts a title insurer paid to satisfy mechanic's liens. Palmer produced no evidence on these payments at the trial, and they were not included in my findings as to expenses and lien payments. There was no appeal from these findings. Because these payments would be equally important to all of the theories of damages that were con-

sidered at the time of the original trial, the reversal does not give cause to reopen the evidence so they can be considered at this time.

C. The lost interest.

Plaintiff contracted for security to satisry his note on default. To the extent the property afforded Palmer that security, he cannot recover of the defendant. Because the terms of the note included interest, we must determine if the value of property was sufficient to satisfy the interest as well as the principal of the note. According to its terms, the note became due on May 8, 1976, but the foreclosure was two years later. Obviously, Palmer should not profit from any unreasonable delay, and interest can only be included to the extent the foreclosure was timely held.

Although the delay is very long, I find that it was reasonable. Delay for the first few months was justified

sidered at the time of the original trial, the reversal does not give cause to reopen the evidence so they can be considered at this time.

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Although the delay is very long, I find that it was reasonable. Delay for the first few months was justified

because of a short mutual extension of the note. Next, delay was appropriate while Palmer attempted to grasp the complexity of his situation-holding a fourth deed of trust instead of the promised first. Then, in August 1976, the first bankruptcy petition was filed, which imposed an automatic stay.

Judge Schwarzer's statements at the oral argument indicate that I am to look to my experience with this case and with bankruptcy cases generally to see if the plaintiff's post-bankruptcy delay in foreclosing was unreasonable.

This was a case under the Bankruptcy Act and foreclosures were therefore stayed by Bankruptcy Rule 601. That rule provided a procedure for seeking relief from the automatic stay, but the procedure was rarely used. The issue in such matters was usually perceived to be whether or not the estate had equity in the subject property. If the trus-

tee was making some effort to realize equity from the particular parcel-as the trustee was doing here-secured creditors were generally unwilling to pay the cost of suing for relief from stay, which would ordinarily require expensive appraisal testimony. In the case at bar, there were additional reasons as to why one in Palmer's position would be reluctant to sue, namely, the title problems and Palmer's junior status to three other trust deeds, as well as the various mechanics liens. It is important to note that all of the senior lien holders also delayed seeking relief from the stay. Finally, the holder of the first deed of trust applied for an abandonment on September 7, 1977, and, later, the property was abandoned on October 26, 1977. Then Palmer had to negotiate with the senior encumbrancers, raise the funds to buy out their interests and, finally, wait approximately four months to satisfy

California foreclosure requirements.

Accordingly, the two year delay was reasonable under the then law and practice.

The note (Exhibit 1A) provided for 10% interest from March 6, 1976, two years and 63 days before the foreclosure. The interest is therefore $10,863.01.

My calculations are as follows:

Amount lent	$50,000.00
Interest	10,863.01
Payment on liens and foreclosure expense	47,030.33
	$107,893.34
Less: Fair market value at time of foreclosure	99,000.00
Balance dur	$ 8,893.34

This sum should bear interest at 7% from May 8, 1978. Plaintiffs are entitled to their costs of suit in the Bankruptcy Court. Defendants are entitled to their costs on the appeal.

The foregoing discussion includes my findings of fact and conclusion of law.

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In Re

ILBERT TUCKER
MARGARET TUCKER

Bankrupts

Bankruptcy
No.576-1826-A
576-2747-A
JOINT ADMINISTRATION

ROBERT PALMER AND
FRANCES PALMER

Plaintiffs

vs.

ILBERT TUCKER AND
MARGARET TUCKER

Defendants

ORDER DENYING MOTION FOR LEAVE TO AMEND OR SUPPLEMENT PLEADIN

This matter having come on regularly for hearing, plaintiff appearing pro se and defendants appearing by Dennis Powell, Esq. and good cause appearing,

The motion for leave to ament or supplement the pleadings is hereby denies for the reasons stated orally during the hearing, including-but not limited to: (1) the attack on the trustee's quitclaim to Boebel has already been raised by Palmer and decided adversely to him and (2) any causes of action a-

gain Tucker from fraud, breach of fiduciary obligations, and wilful and malicious injury are timed barred under former sections 17(c)(2), former 11 U.S.C. section 35(c)(2); the alleged wrongs and injury occurred years ago, even if the state court did not confirm the injury until October 20, 1981.

Dated: Nov. 29, 1982.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

In the Matter of

ILBERT TUCKER AND

MARGARET TUCKER

Bankrupts

No 576-2747-A
576-1626-A

(Consolidated by Court Order)

(Proposed)

ORDER DENYING MOTION FOR RELIEF FROM ORDER APPROVING COMPROMISE WITH NOTICE

The motion of Robert S. Palmer and Frances M. Palmer for relief from order approving compromise without notice came regularly for hearing before the undersigned Bankruptcy Judgeon July 21, 1978, and September 13, 1978. Moving parties appeared by and through James R. Hagen, Esq. and responding parties, J. M. Dungan, Trustee herein appeared by and through Hoffman, Kelly & Iznirian, by William Kelly; and Philip and Rien Boebel appeared through Carnazzo, Her=

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

In the Matter of

ILBERT TUCKER AND

MARGARET TUCKER

Bankruptcy No. 378-37413-A
378-1A3A-A

(Consolidated by Court Order)

(Proposed)

ORDER DENYING MOTION FOR RELIEF FROM ORDER APPROVING COMPROMISE WITH NOTICE

The motion of Robert B. Palmer and Frances M. Palmer for relief from order approving compromise without notice came regularly for hearing before the undersigned Bankruptcy Judge on July 21, 1978, and September 13, 1978. Moving parties appeared by and through James E. Hagen, Esq. and responding parties, A. M. Dungan, Trustee herein appeared by and through Hoffman, Kelly & Zanolian, by William Kelly and Philip and Ryan Boebel appeared through Carmazzo, Hoe

Herendeen & Bryan, their attorneys, by Robert P. Herendeen.

This court having considered the moving papers, memoranda and declarations filed herein and oral testimony, stipulations and the arguments of counsel, the Court being duly advised in the premises, and good cause appearing, it is hereby

ORDERED that the motion for relief from order approving compromise without notice filed herein by Robert S. Palmer and Frances M. Palmer be, and the same hereby is denied and dismissed. Each party is to bear its own costs.

Dated: Nov. 6. 1978.

SEYMOUR J. ABRAHAMS
Bankruptcy Judge

HOFFMAN & KELLY
Attorneys at Law
100 Van Ness Ave.
Nineteenth Floor
San Francisco, California 94102
Telephone: (415) 864-2917

Attorneys for Trustee

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

In the Matter of

ILBERT TUCKER AND
MARGARET TUCKER

Bankrupts.

Nos. 576-1826-A
576-2747-A

AMENDED ORDER AUTHORIZING TRUSTEE TO COMPROMISE CONTROVERSY (BOEBEL)

J. M. Dungan, trustee of the estate of the above named bankrupts, having filed herein his APPLICATION FOR ORDER AUTHORIZING TRUSTEE TO COMPROMISE CONTROVERSY (BOEBEL) on September 15, 1977 and said application having come on regularly for hearing on due and proper notice to creditors on October 14, 1977, WILLIAM KELLY appearing for the trustee, and no one appearing in opposition to said application, and the Court being

fully advised in the premises, no adverse interest appearing, and this being a proper case for the making of the order following, and this Court having entered an order approving said compromise on October 26, 1977, and it later appearing that the real property description attached to said order and attached to the application originally filed in this matter was erroneous and that the real property involved in the compromise is described in Exhibit "A" hereto.

IT IS HEREBY ORDERED that J. M. Dungan, trustee herein be, and he is hereby, authorized to compromise the controversy between the estate herein and PHILIP BOEBEL and RIEN BOEBEL relative to the matters described in said application upon payment to the estate of the sum of $1,200.00 by PHILIP BOEBEL and RIEN BOEBEL and by execution by the trustee of a quit-

claim deed to the real property described in Exhibit "A" hereto and that said trustee be, and he is hereby, authorized to execute any documents necessary and proper to carry out the provisions of said compromise.

DATED this 23rd day of November, 1977,

JUDICIAL COUNCIL

OF THE NINTH CIRCUIT

FILED
6/21/84

In re Charge of	)	No. 84-8023
	)	
Judicial Misconduct	)	ORDER

Before: BROWNING, Chief Judge

A complaint alleging misconduct has been filed against a bankruptcy judge in this circuit pursuant to the Ninth Circuit Procedures for Processing Compliants of Judicial Misconduct, 28 U.S.C., 9th Cir., R. App. II, issued under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. Pub. L. No. 96-458, 94 Stat. 2035 (1980). The complainant was a creditor in a bankruptcy case handled by the judge who is the subject of the complaint.

The overall charge against the judge is that he was part of a conspiracy in which he "was the principal character directing and controlling a fraudulent bankruptcy by which the bankrupt was able

to make millions of dollars." The bankruptcy was filed on August 6, 1976. Two years before that, the complainant claims to have been told by the bankrupt that the latter had "planned his bankruptcy, with his attorney, through the bankruptcy court." The complainant further alleges that the judge appointed a trustee, counsel for the trustee and an appraiser to help carry out the fraudulent bankruptcy with other co-conspirators. The judge continued until at least August 1982 to hear and decide matters which the complainant considers to reflect the judge's involvement in the alleged conspiracy.

The complaint itself consists of a detailed description of the complainant's efforts to recoup through the bankruptcy court and the state courts some part of the loans he had made to the bankrupt. In the course of these efforts, the complainant employed several different at-

torneys whom he feels compromised his rights. The complainant also feels that the trustee, the trustee's counsel, the appraiser and others conspired with the court to perpretrate a fraudulent bankruptcy. Finally, the complainant contends that a state court judge forced him to accept an unconscionable settlement of some of his claims.

The complainant's case against the bankruptcy judge rests upon the existence of a "prior private agreement" as a result of which the judge purportedly made or withheld rulings in order to benefit the bankrupt. The complainant assumes the existence of this prior agreement from the claimed admission by the bankrupt that he and his attorney planned the bankruptcy "through the bankruptcy court." Other than this one ambiguous remark, the complainant relies solely on the judge's rulings as evidence of the

judge's involvement in the alleged conspiracy to carry out a fraudulent bankruptcy. The complainant reviews numerous of the judge's rulings and failures to rule in an attempt to show the judge strained to rule in favor of the bankrupt or withheld rulings when doing so would benefit the bankrupt.

A close examination of the complaint reveals that the charges against the bankruptcy judge are essentially objections to procedural or substantive rulings the judge made or failed to make. Each ruling or failure to rule cited by the complainant was subject to review by a higher court. Appellate review is the proper remedy for the kind of error in procedural and substantive rulings alleged in the complaint. The Procedures for Processing Complaints of Judicial Misconduct are designed to handle allegations of misconduct for which no judicial reme-

Judge's involvement in the alleged conspiracy to carry out a fraudulent bankruptcy. The complainant reviews numerous of the Judge's rulings and failures to rule in an attempt to show the Judge obtained to rule in favor of the bankrupt or withheld rulings when doing so would benefit the bankrupt.

A close examination of the complaint reveals that the charges against the bankruptcy Judge are essentially objections to procedural or substantive rulings the Judge made or failed to make. Each ruling or failure to rule cited by the complainant was subject to review by a higher court. Appellate review is the proper remedy for the kind of error it procedural and substantive rulings alleged in the complaint. The Procedures for Processing Complaints of Judicial Misconduct are designed to handle allegations of misconduct for which no judicial rem-

dy exists. Because appellate review was available, the complainant's charges must be dismissed as inappropriate for consideration under the Procedures. Procedures ¶3(A)(ii); In re Charge of Judicial Misconduct, 613 F.2d 768, 769 (9th Cir. 1980).

The complainant, of course, alleges that the judge's rulings and failure to rule constitute evidence of his participation in a conspiracy to carry out a fraudulent bankruptcy. The errors alleged by the complainant, however, are no different from those that might be cited in any similar bankruptcy proceeding. Their nature and extent are not such as to justify an inference of judicial misconduct. In re Charge of Judicial Misconduct, 685 F.2d 1226 (9th Cir. 1982).

Nor can an inference of judicial misconduct be based on the alleged admission by the bankrupt of the judge's participa-

tion in a conspiracy. The bankrupt's remark that his bankruptcy was planned "through the bankruptcy court" is not probative of an improper involvement by the judge in a fraudulent bankruptcy. The only other evidence cited by the complainant are the judge's rulings which, for the reasons noted above, are an insufficient basis for an inference of judicial misconduct.

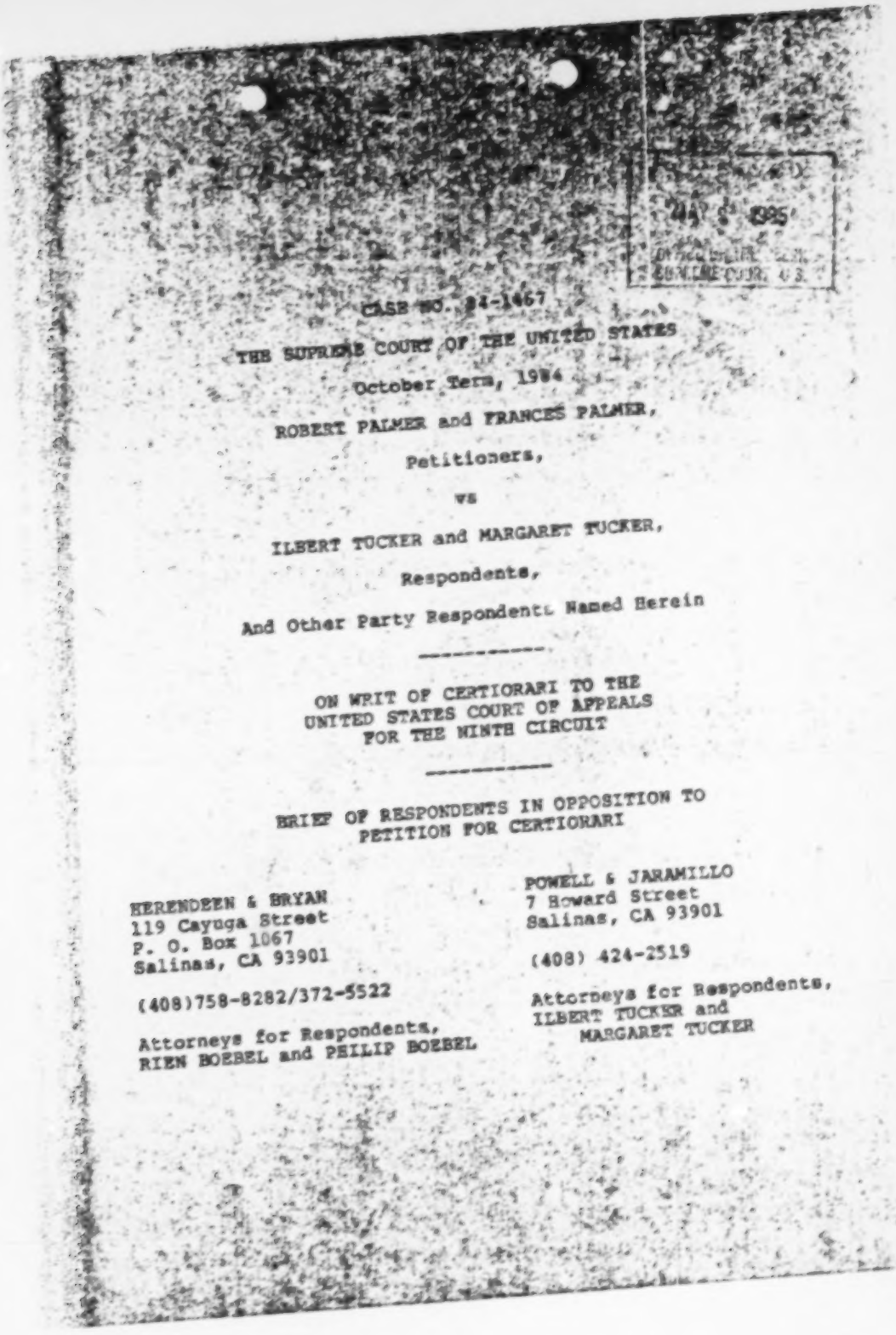
Finally, the Procedures for Processing Complaints of Judicial Misconduct apply to four specifically enumerated categories of federal judicial officers. Bankruptcy judges comprise one such category. The other individuals against whom the complainant articulates grievances--attorneys, a state court judge, the trustee the appraiser and others--are beyaond the jurisdiction of the Procedures. Procedures, ¶1.

The complaint is dismissed.

Signed by Chief Judge

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.



(3)

CASE NO. 84-1467

THE SUPREME COURT OF THE UNITED STATES

October Term, 1984

ROBERT PALMER and FRANCES PALMER,

Petitioners,

vs

ILBERT TUCKER and MARGARET TUCKER,

Respondents,

And Other Party Respondents Named Herein

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION TO
PETITION FOR CERTIORARI

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7 Howard Street
Salinas, CA 93901

(408) 424-2519

Attorneys for Respondents,
ILBERT TUCKER and
MARGARET TUCKER

788

Questions Presented For Review

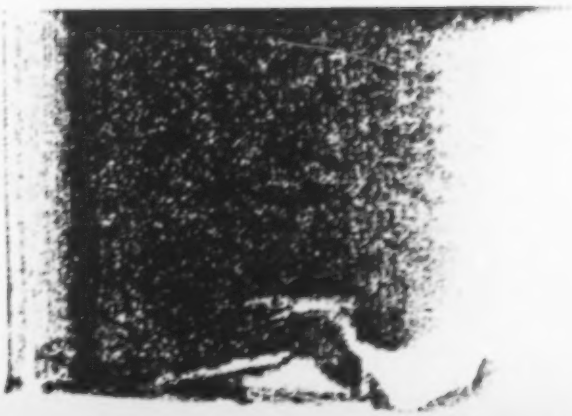
1. Petitioner seeks to determine the constitutionality of the power of the Bankruptcy Judge to appoint trustees, appraisers and attorneys.

2. Petitioner seeks review of the denial of a writ of mandate sought to remove a Bankruptcy Judge and a Judge of the District Court.

3. Petitioner seeks a writ of mandamus against a Panel of the Court of Appeals, the Chief District Judge and Chief Circuit Judge.

4. Petitioner seeks review of the Court of Appeals affirmance of District Court orders expunging a Lis Pendens, approving attorney fees and costs.

5. Petitioner seeks review of the Court of Appeals affirmance of District Court order upholding orders and decision of Bankruptcy Court denying a request to amend pleadings; vacating a compromise and determining the amount of damages due petitioner.



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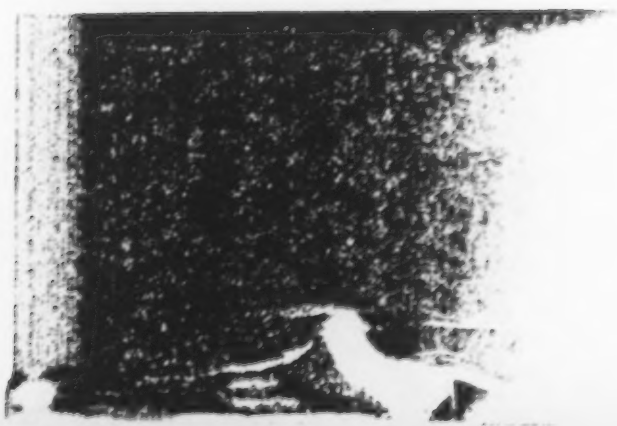
PARTIES

Ilbert Tucker and Margaret Tucker, and Philip Boebel and Rien Boebel, Respondents, Ralph Duvall and Margaret Duvall, and Mr. and Mrs. George Robinette III, Interested Parties on Notice,

Honorable Seymour J. Abrahams, Respondent
Honorable Marilyn Hall Patel, Respondent,
Honorable Robert Peckham, Respondent
Honorable James R. Browning, Respondent
Honorable Jerome Farris, Respondent
Honorable Arthur L. Alarcon, Respondent
Honorable William A. Norris, Respondent



AUTHORITES

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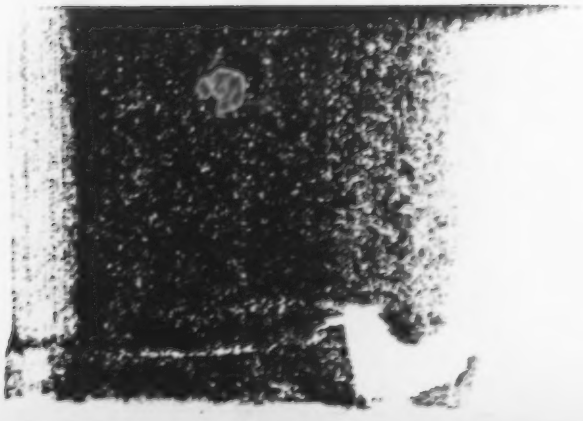


ARGUMENT

The Petition for Certiorari should not be granted because there are no issues raised in the Petition which are within the considerations governing review on Certiorari set forth in Rule 17.

Neither opinion of the Court of Appeals (Appendix Pages 71-78 and 79-84) represents a decision in conflict with another Court of Appeals; nor a decision on "a federal question in a way in conflict with a state court of last resort"; or a departure from "the accepted and usual course of judicial proceedings"; nor "sanctioned such a departure by a lower court". (Rule 17.1(a))

There are no significant federal questions decided below. In fact, in the BOEBEL matter, the District Court and the Court of Appeals applied the law of the State of California and did so in conformity with the decisions of the Courts of that State. (Appendix Pages 85-91 and 82-84)

Moreover, those issues encompassed within the request for mandamus and the request for constitutional review were determined not to have been raised in the courts below and have not been the subject of Appellate review. (Appendix Pages 73-76). Therefore, this court should not consider them in the absence of such review. (Volume 17, Wright and Miller, Federal Practice and Procedure, Section 4036 at 27-28)

Finally, there is absolutely no credible support in the Petition for the issuance of any form of writ to deal with the conduct of the Federal Judiciary in this matter.

CONCLUSION

Accordingly, the Petition should be denied and this Court in its review should determine that petitioner's document reflects the motives and actions of a vexatious and bad faith litigant and appropriate sanctions, in the form of attorney fees and costs, should be levied against him as provided in the decision of Alyeska Pipeline Service Co. vs Wilderness Society, 421 U.S. 240 at 257-259 (1975).

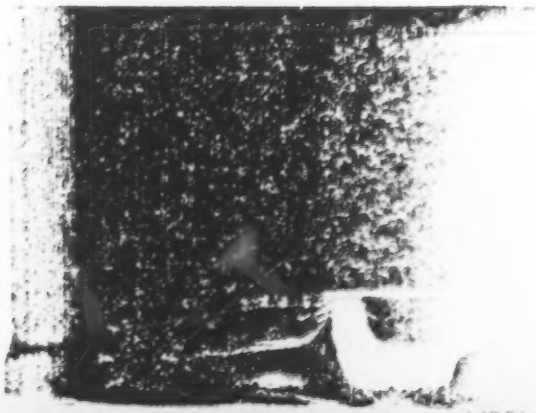
Dated: May 1, 1985.

HERENDEEN & BRYAN

By: _____
Robert P. Herendeen
Attorney for Respondents,
PHILIP BOEBEL and
RIEN BOEBEL

POWELL & JARAMILLO

By: _____
Dennis Powell
Attorney for Respondents,
ILBERT TUCKER and
MARGARET TUCKER



VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I have read the foregoing _____ and know its contents.

☒ CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am ☐ an Officer ☐ a partner _____ ☐ a _____ of _____

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on _____, 19___, at _____ California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_____ _____

Type or Print Name Signature

ACKNOWLEDGMENT OF RECEIPT OF DOCUMENT

(other than summons and complaint)

Received copy of document described as _____

_____

On _____ 19___.

_____ _____

Type or Print Name Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF MONTEREY

I am employed in the county of Monterey, State of California.

I am over the age of 18 and not a party to the within action; my business address is: 119 Cayuga Street, Salinas, CA 93901

On May 1, 1985, I served the foregoing document described as BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI

_____

on the parties

in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Robert Palmer, In Pro Per
1819 Newcastle Drive
Los Altos, CA 94022

(BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Salinas, California.

Executed on May 1, 1985, at Salinas, California.

(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.

Executed on _____, 19___, at _____, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Virginia Friedman

Type or Print Name

Virginia Friedman

Signature

BAKER'S EXBROOK TIMESAVER (REVISED 6/83)
(For use in California State or Federal Courts)